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Fourth Amendment--Expanding the Scope of Automobile Consent Searches

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FOURTH AMENDMENT—EXPANDING THE SCOPE OF AUTOMOBILE CONSENT SEARCHES

Florida v. Jimeno, 111 S. Ct. 1801 (1991)

I. INTRODUCTION

In *Florida v. Jimeno*,¹ the Supreme Court held that a criminal suspect's right to be free from unreasonable searches was not violated when, after he gave a police officer permission to search his car, the officer opened a closed container found within the car. The majority based its approval of the officer's search on the principle established in *United States v. Ross*,² which held that a warrantless search of an automobile based on probable cause extends to closed containers "that may conceal the object of the search."³ The majority thus extended the *Ross* holding which pertained to searches based on probable cause, to those searches that lacked probable cause but instead were based solely on the suspect's general consent.⁴ The majority held that the Fourth Amendment was not violated since it was objectively reasonable for the police officer to understand that "the scope of the suspect's consent permitted him to open [the] particular container within the automobile."⁵

Conversely, the *Jimeno* dissent argued that closed containers merit a "heightened expectation of privacy" over that of the interior of an automobile.⁶ This heightened expectation, according to the dissent, mandates that a police officer wishing to examine the contents of a container found during a consent search of an automobile must obtain additional consent to search the container.⁷ The dissent feared that a broadened scope of consent searches would allow police officers to exploit the ignorance of citizens who might not understand that their consent would authorize the police to "rum-

¹ 111 S. Ct. 1801 (1991).

² 456 U.S. 798 (1982).

³ *Id.* at 825.

⁴ *Jimeno*, 111 S. Ct. at 1804.

⁵ *Id.* at 1803.

⁶ *Id.* at 1805 (Marshall, J., dissenting).

⁷ *Id.* (Marshall, J., dissenting).

mage through [their] packages.”⁸ Furthermore, the dissent warned that by the majority’s reasoning, a consent search of an automobile could arguably extend to searches of the suspect’s body cavities since a reasonable person may know that drug couriers often store contraband on their person.⁹

This Note examines the evolution of the scope of consent searches of automobiles for concealed items such as contraband and argues that the Court reasonably extended the *Ross* doctrine to consent searches of automobiles while still preserving the Fourth Amendment protections against unauthorized invasions of privacy. The Court thus correctly balanced the societal concern of maintaining important and efficient law enforcement techniques against the legitimate individualized right to privacy protection in closed containers. This Note argues, however, that while the majority’s opinion reached the correct outcome, it completely failed to justify the *Ross* extension by analyzing the relationship between warrantless searches based on probable cause and those based on general consent. Had the majority drawn the analogy between these two concepts, it could have rendered an opinion impervious to any legitimate attacks charged by the dissent, save a renunciation of the doctrine of *stare decisis* itself. As a result of its failure to draw the necessary analogy between *Ross* and *Jimeno*, the Court rendered a cryptic holding which is vulnerable to the dissent’s criticisms and provides limited guidance for lower courts in future litigation.

II. FOURTH AMENDMENT ANALYSIS

A. BACKGROUND OF THE FOURTH AMENDMENT AND WARRANTLESS SEARCHES

The Fourth Amendment protects “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.”¹⁰ The Supreme Court has interpreted this language as guaranteeing protection of both “[one’s] interest in retaining possession of property and [one’s] interest in maintaining personal privacy.”¹¹ In his concurring opinion in *Katz v. United States*,¹² Justice Harlan dissected the privacy expectation

⁸ *Id.* at 1806 (Marshall, J., dissenting).

⁹ *Id.* (Marshall, J., dissenting).

¹⁰ U.S. CONST. amend IV.

¹¹ *Texas v. Brown*, 460 U.S. 730, 747 (1983) (Stevens, J., concurring).

¹² 389 U.S. 347 (1967). In *Katz*, the court determined that the petitioner had a justifiable expectation of privacy while using a public telephone booth which was violated when government agents eavesdropped on his conversation via electronic surveillance equipment.

underlying the Fourth Amendment protections into two basic components: "[F]irst . . . a person [must] exhibit[] an actual (subjective) expectation of privacy and second, [this] expectation [must] be one that society is prepared to recognize as reasonable."¹³ Furthermore, if an individual's subjective expectation is objectively justified under a given set of circumstances thus satisfying the first component, the second component of societal recognition of reasonableness is usually satisfied as well.¹⁴

When one's subjective expectation of privacy is found to be reasonable, the Fourth Amendment generally imposes a strong presumption in favor of requiring a warrant for searches and seizures.¹⁵ Thus, a large part of the Court's task in deciding Fourth Amendment search and seizure cases involves "making a judgment as to the scope of the word 'unreasonable.'"¹⁶ In 1967, the Supreme Court articulated an exclusionary approach for distinguishing between reasonable and unreasonable searches that has since become a boiler plate principle in analyzing Fourth Amendment cases involving warrantless searches.¹⁷ This principle, espoused in *Katz*, holds that "searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment — subject only to a few specifically established exceptions."¹⁸ The scope of these well-delineated exceptions, including voluntary consent,¹⁹ must be defined in a way consistent with the justifications that spawned them.²⁰

By and large, the majority of the articulated exceptions to the

¹³ *Id.* at 361. (Harlan, J., concurring).

¹⁴ *Id.* (Harlan, J., concurring).

¹⁵ *Id.* at 357.

¹⁶ ERWIN N. GRISWOLD, SEARCH AND SEIZURE: A DILEMMA OF THE SUPREME COURT 39 (1975).

¹⁷ See *Katz v. United States*, 389 U.S. 347 (1967).

¹⁸ *Id.* at 357 (footnotes omitted). The consent search that precipitated *Jimeno* is one such exception. Other exceptions to the warrant requirement include: searches incident to a valid arrest, "emergency searches, searches of vehicles stopped in transit, seizures under the plain view doctrine, searches and seizures in open fields, and seizures of abandoned property." JAMES B. HADDAD ET AL., CRIMINAL PROCEDURE 246-47 (3d ed. 1987).

¹⁹ Indeed, according to the Supreme Court, "[w]hile the Fourth and Fourteenth Amendments limit the circumstances under which the police can conduct a search, there is nothing constitutionally suspect in a person's voluntarily allowing a search." *Schneekloth v. Bustamonte*, 412 U.S. 218, 242-43 (1973).

²⁰ See, e.g., *New York v. Belton*, 453 U.S. 454, 457 (1981) ("[t]he scope of [a] search must be 'strictly tied to and justified by' the circumstances which rendered its initiation permissible") (quoting *Chimel v. California*, 395 U.S. 752, 762 (1969)); *Mincey v. Arizona*, 437 U.S. 385, 393 (1978) ("warrantless searches must be 'strictly circumscribed by the exigencies which justify its initiation'") (quoting *Terry v. Ohio*, 392 U.S. 1, 25-26 (1967)).

warrant requirement are based upon a conclusion that under certain circumstances, the exigencies of a situation make immediate search and seizure without the benefit of a warrant imperative.²¹ Conversely, in situations where exigent circumstances which might otherwise justify forgoing a valid search warrant do not exist,²² the Supreme Court has rejected warrantless search exceptions.²³

One exception to the warrant requirement that does not always fall within the group of exceptions based on exigent circumstances is the so-called consent search. The consent search plays a unique and valuable role in law enforcement and is generally justified in terms of its effectiveness and efficiency, rather than on the urgent circumstances incident to its use.²⁴ Police officers frequently rely on consent searches in lieu of obtaining a search warrant because they "believe that the search warrant procedure is overly technical and time-consuming and that it has no corresponding advantages for them or meaningful protections for the individual."²⁵ Moreover, a search grounded on consent may have an added benefit to the searching police officer, in "that the search pursuant to consent may often be of a somewhat broader scope than would be possible under a search warrant,"²⁶ provided the consenting party does not explic-

²¹ See e.g., *Texas v. Brown*, 460 U.S. 730, 735-36 (1983) (citing *Warden v. Hayden*, 387 U.S. 294 (1967)) (hot pursuit); *United States v. Ross*, 456 U.S. 798 (1982) (the automobile exception to the warrant requirement); *Chimel v. California*, 395 U.S. 752 (1969) (protective sweep search of suspect and surrounding area incident to arrest); *United States v. Jeffers*, 342 U.S. 48 (1951) (exigent circumstances); *Zap v. United States*, 328 U.S. 624 (1946) (consent searches).

²² For example, searches where a reasonable delay to allow sufficient time to obtain a warrant would likely prove inconsequential. See, *State v. Wells*, 539 So. 2d 464 (Fla. 1989), *aff'd*, 110 S. Ct. 1632 (1990) (warrantless search by police officers of locked suitcase found inside impounded vehicle violated petitioner's rights under Fourth Amendment).

²³ See, e.g., *Michigan v. Tyler*, 436 U.S. 499 (1978) (search of burned home for evidence of arson required issuance of criminal search warrant); *United States v. Chadwick*, 433 U.S. 1 (1977) (search of luggage seized at time of arrest cannot be justified as incident to that arrest if search is remote in time or place from the arrest); *GM Leasing Corp. v. United States*, 429 U.S. 338 (1977) (warrant required where government agents' delay in making warrantless entry into petitioner's office evidenced no exigent circumstances).

²⁴ Its value was illustrated by the Court in *Schneckloth v. Bustamonte*, 412 U.S. 218, 243 (1973), when it rejected the argument that "every reasonable presumption ought to be indulged against" a finding of consent. Furthermore, the court has held that the burden of proof which must be satisfied by the government in proving valid consent is only a preponderance of the evidence, rather than some higher standard. *United States v. Matlock*, 415 U.S. 164, 177-78 n.14 (1974).

²⁵ LAWRENCE P. TIFFANY ET AL., *DETECTION OF CRIME* 159 (1967).

²⁶ A consent search is "not subject to challenge simply because what was permitted was 'a general exploratory search' beyond that any search warrant could authorize." WAYNE LAFAVE, *SEARCH AND SEIZURE*, § 8.1 n.5 (1987) (quoting *May v. State*, 618 S.W.2d 333 (Tex. Crim. App. 1981)).

itly or implicitly impose limitations on his consent.²⁷ Other advantages to consent searches include; (1) where probable cause is lacking and thus, there is no basis for obtaining a search warrant, valuable evidence can be discovered where otherwise it would not,²⁸ (2) when no evidence is found after a consent search, the police officer may quickly divert his attention elsewhere, thus minimizing the amount of valuable time wasted on bootless endeavors, and (3) similarly, the amount of time that innocent suspects are detained is minimized.

B. LIMITATIONS ON THE SCOPE OF CONSENT SEARCHES GENERALLY

The authorization to search an area or container based on a party's general consent renders police action reasonable, and thus not in violation of the Fourth Amendment.²⁹ Although Fourth Amendment cases arising from consent searches often turn on whether the suspect's consent was voluntary, a related issue concerning the "scope" of the consent given may also arise. A determination that consent was validly obtained by a police officer prior to a search does not necessarily ensure that evidence unearthed in the ensuing search will be admissible in court.³⁰ When consent is the basis for a warrantless search, the police must limit their search to the authority they have been granted by the consenting party.³¹ Thus, any limitations imposed by the consenting party concerning the scope of the search must be respected by the searching police officers.³² Specifically, a validly obtained consent search "shall not exceed, in duration or physical scope, the limits of the consent given."³³

The rationale underlying this limitation on the scope of consent

²⁷ *Id.* at § 8.1.

²⁸ *Schneekloth*, 412 U.S. at 227 ("[i]n situations where the police have some evidence of illicit activity, but lack probable cause to arrest or search, a search authorized by a valid consent may be the only means of obtaining important and reliable evidence").

²⁹ *Id.* at 219 (search based on consent is facially reasonable in spite of the absence of either a warrant issued by a magistrate or probable cause as required by the Fourth Amendment).

³⁰ *LAFAVE*, *supra* note 26, at § 8.1(b).

³¹ *Walter v. United States*, 447 U.S. 649, 656 (1980) (plurality opinion) ("When an official search is properly authorized — whether by consent or by issuance of a valid warrant — the scope of the search is limited by the terms of its authorization").

³² *People v. Torand*, 622 P.2d 562, 565 (Colo. 1981) (where "the consent is confined to certain items, the search . . . must be restricted to those objects and areas which are likely to contain the articles sought").

³³ See MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE § SS 240.3 (1975) (the consenting party may narrow the scope of his authorization attending a search by withdrawing it, by confining the permissible area of the search, or by limiting the duration or intensity of the search).

searches is a logical extension of the limitations placed on warrant searches. Indeed, overstepping the terms of a valid consent search is no different than exceeding the explicit parameters imposed on a validly obtained warrant.³⁴ In both cases the searching police officer has transgressed the bounds of his legal authorization and thus his actions constitute an unlawful invasion of privacy unless there is some other justification for the search.³⁵ Regardless of whether the limitations imposed by a consenting party are manifested explicitly or implicitly, they must be given full effect by the searching police officer.³⁶

Police officers conducting an investigation are likely to be interested in searching a particular area, such as an automobile, and thus will normally specify a certain place and object of their search.³⁷ The suspect posed with the request to search his vehicle by an investigating officer will likely either respond with a general unqualified consent,³⁸ as was the case in *Jimeno*, or decline to allow any search whatsoever.³⁹ When the terms of a consent are non-specific and unqualified, the court must make its determination as to the lawfulness of the search based on what an objective third party, knowing all the facts, would understand to be the scope of the consent given.⁴⁰

C. THE DISTINCTION BETWEEN CONSENT SEARCHES OF AUTOMOBILES AND CLOSED CONTAINERS

Due to a unique footnote tied with the passage of the Fourth

³⁴ *Schneckloth v. Bustamonte*, 412 U.S. 218, 243 (1973) (referring to police searches authorized by consent, the Court stated "[t]he actual conduct of the search may be precisely the same as if the police had obtained a warrant").

³⁵ See, *United States v. Milian-Rodriguez*, 759 F.2d 1558, 1563 (11th Cir. 1985); *Mason v. Pulliam*, 557 F.2d 426, 429 (5th Cir. 1977).

³⁶ See, e.g., *United States v. Dichiarante*, 445 F.2d 126 (7th Cir. 1971) (suspect's consent to search his home for narcotics did not authorize searching police officers to read documents found during the search).

³⁷ See, e.g., *Schneckloth*, 412 U.S. 218.

³⁸ See, e.g., *State v. Wells*, 539 So. 2d 464 (Fla. 1989) (suspect gave police general consent to look inside trunk of vehicle); *United States v. Torres*, 504 F. Supp. 864 (E.D. Cal. 1980), *aff'd*, 659 F.2d 1012 (9th Cir. 1981) (defendant's consent authorized police officers to search entire premises including automobiles parked at certain street address); *Lamb v. State*, 516 P.2d 1405 (1973) (suspect asked by police if they could "look around" in his home, he responded that they could look anywhere they wanted to).

³⁹ For example, it is unlikely that a suspect facing a potential search of his automobile by a police officer would authorize the officer to search "anywhere in the car except underneath the right front passenger side floor mat" as this would draw closer attention to the excluded area and increase the officer's suspicion. Thus the suspect is more likely to deny authorization for the warrantless search altogether.

⁴⁰ See *Illinois v. Rodriguez*, 110 S. Ct. 2793, 2799-2801 (1990) (search by police upheld since they reasonably believed consenting party had requisite authority to consent to area in question, even though that belief turned out to be false).

Amendment, automobiles have historically been exempt from the traditional warrant requirement.⁴¹ The same Congress that ratified the Fourth Amendment, also enacted a statute that precluded ships from the warrant requirement.⁴² The Court has subsequently reasoned that since Congress did not intend ships to fall within the warrant requirements of the Fourth Amendment, automobiles likewise are not intended to receive warrant protection.⁴³ Based on this reasoning, the Court established the "automobile exception" in the landmark case of *Carroll v. United States*,⁴⁴ holding that a warrantless search of an automobile justified by probable cause was not unreasonable and thus lawful under the Fourth Amendment.⁴⁵

Two rationales have been espoused by the Court to justify exempting the automobile from the explicit warrant requirement called for in the Fourth Amendment. First, society recognizes a diminished expectation of privacy attached to automobiles making a warrantless search based on probable cause reasonable.⁴⁶ Second, a delayed search of an automobile is often impractical since "the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought."⁴⁷ Thus, exigent circumstances surrounding automobiles also weigh in favor of their exemption from the warrant requirement.⁴⁸ More recently, the Court has seemingly

⁴¹ *Carroll v. United States*, 267 U.S. 132, 150-51 (1925).

⁴² Act of July 31, 1784, 1 Stat. 29, 43 et seq.

⁴³ Indeed, after reviewing pertinent legislation passed by Congress, the Court stated: [T]he guaranty of freedom from unreasonable searches and seizures by the Fourth Amendment has been construed, practically since the beginning of the Government, as recognizing a necessary difference between a search of a store, dwelling house or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon or automobile, for contraband goods, where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.

United States v. Ross, 456 U.S. 798, 806 (1982) (quoting *Carroll v. United States*, 267 U.S. 132, 153 (1925)).

⁴⁴ 267 U.S. 132 (1925). In *Carroll*, police officers stopped and searched a car they believed was transporting contraband as part of a bootlegging scheme. *Id.* at 136. Basing their search on probable cause, the officers tore open the upholstery of the car seats and discovered bottles of gin and whiskey hidden therein. *Id.* The Court determined that the officers' search under the circumstances was justified by probable cause, and thus the warrantless search was not unreasonable. *Id.* at 162.

⁴⁵ *Id.*

⁴⁶ *Arkansas v. Sanders*, 442 U.S. 753 (1979). Unlike an individual's home, the nature of an automobile is such that much of its contents is open to public view. *Id.* at 761. Furthermore, automobiles are almost exclusively used for travel and thus subject to extensive government regulation. *Id.* The Court reasoned that these factors make the warrantless search of an automobile less intrusive than that of more private areas. *Id.*

⁴⁷ *Carroll*, 267 U.S. at 153.

⁴⁸ See, e.g., *Chambers v. Maroney*, 399 U.S. 42 (1970); *Carroll*, 267 U.S. at 132. Additionally, if the police could seize an automobile without a warrant, but were not allowed

disregarded this second factor as a justification for the automobile exception and focused solely on the first justification of a diminished expectation of privacy to exclude automobiles from the Fourth Amendment's warrant requirement.⁴⁹

In contrast to the diminished expectation of privacy in automobiles, and the corresponding reduced protection under the Fourth Amendment, packages have historically received warrant protection.⁵⁰ Indeed, in 1878 the Supreme Court specifically stated that sealed packages can "only be opened and examined under . . . warrant."⁵¹ Over the last one hundred years, this principle has been reaffirmed many times and its reasoning cited in current jurisprudence.⁵² Moreover, the Supreme Court stated explicitly in *Ross* that closed containers mandate Fourth Amendment protection regardless of their physical characteristics.⁵³

Given this heightened expectation of privacy attached to packages over automobiles, the question arises as to whether general consent to search an automobile permits the opening of closed but unlocked containers found within the automobile. This was the central issue facing the Supreme Court in *Jimeno*.

III. *FLORIDA V. JIMENO*

A. FACTUAL AND PROCEDURAL BACKGROUND

On July 20, 1988, Miami police officer Frank Trujillo first observed Enio Jimeno at a public telephone consulting his beeper and making several telephone calls.⁵⁴ Officer Trujillo overheard part of one of the conversations, which led him to suspect that Jimeno was

to conduct an immediate search, they would be forced to detain the occupants of the vehicle until the warrant could be obtained.

⁴⁹ See, e.g., *Michigan v. Thomas*, 458 U.S. 259, 261-62 (1982) (inventory search of respondent's automobile revealed narcotics, thus warrantless search was lawfully extended to include further inspection of vehicle's air vents without any showing of exigent circumstances).

⁵⁰ *Ex parte Jackson*, 96 U.S. 727 (1878).

⁵¹ *Id.* at 733.

⁵² See, e.g., *United States v. Chadwick*, 433 U.S. 1, 11 (1977) ("[n]o less than one who locks the doors of his house against intruders, one who safeguards his personal possessions in this manner [inside a foot locker] is due the protection of the Fourth Amendment Warrant Clause"); *Katz v. United States*, 389 U.S. 347, 351 (1967) (an individual manifests an intent to keep his belongings "preserve[d] as private" when he places them inside a closed container).

⁵³ *United States v. Ross*, 456 U.S. 798, 822 (1982) ("the central purpose of the Fourth Amendment forecloses [any] distinction . . . [between] a paper bag or . . . locked attaché case").

⁵⁴ Brief for Respondent at 2, *Florida v. Jimeno*, 111 S. Ct. 1801 (1991) (No. 90-622) [hereinafter Brief for Respondent].

involved in illegal drug trafficking.⁵⁵

Immediately after the telephone conversations, Jimeno and two other suspects drove to a nearby apartment complex and went inside.⁵⁶ Officer Trujillo continued to survey the situation from his vehicle.⁵⁷ A few minutes later, one suspect returned to the car, picked up a package therein, and went back inside the building.⁵⁸ Shortly thereafter, all three suspects came out of the building with the package, returned to the car, and continued driving.⁵⁹

Officer Trujillo followed Jimeno's car as it left the apartment complex and subsequently pulled the car over after he saw it make a right turn at a red light without stopping.⁶⁰ After pulling the suspect's car over, Officer Trujillo told Jimeno that he had been stopped for committing a traffic infraction.⁶¹ Trujillo stated further that he suspected Jimeno was transporting narcotics and asked permission to search the car, explaining that Jimeno did not have to consent to the search.⁶² Jimeno responded that "he had nothing to hide" and gave Officer Trujillo permission to search the car.⁶³

After the other two suspects stepped out of the car, Officer Trujillo proceeded to the passenger's side of the car, opened the door

⁵⁵ *Florida v. Jimeno*, 111 S. Ct. 1801, 1803 (1991).

⁵⁶ Brief for Respondent, *supra* note 54, at 2.

⁵⁷ *Id.*

⁵⁸ *Id.* The "package" referred to was a brown paper bag with colored fabric wrapped around it. Brief for United States as Amicus Curiae at 2, *Florida v. Jimeno*, 111 S. Ct. 1801 (1991) (No. 90-622) [hereinafter Brief for United States].

⁵⁹ Brief for Respondent, *supra* note 54, at 2. The suspects remained inside the apartment building for approximately fifteen to twenty minutes before returning to the car. Brief for United States, *supra* note 58, at 3. When they exited the building, Jimeno was carrying a briefcase and the aforementioned brown paper bag. *Id.* As they entered the car, Jimeno passed the brown paper bag to the suspect occupying the front passenger's seat who placed it on the floorboard of the car at her feet. *Id.*

⁶⁰ *Florida v. Jimeno*, 111 S. Ct. 1801, 1803 (1991). Based on the testimony of Officer Trujillo, the trial court made findings of fact including that the traffic violation stop was valid, regardless of the suspected drug trafficking. Brief for Respondent, *supra* note 54, at 3.

⁶¹ *Jimeno*, 111 S. Ct. at 1803.

⁶² *Id.* Specifically, Officer Trujillo said; "Sir, Mr. Jimeno, the reason I'm stopping you — in addition to the traffic infraction, I am conducting a narcotics investigation where I have suspicion to believe you are carrying narcotics in your car." Brief for United States, *supra* note 58, at 3. Officer Trujillo then asked for permission to search the car and explained that Jimeno did not have to consent to the search, did not have to speak with him, and that he was free to leave at any time. *Id.* Officer Trujillo also told Jimeno that if he did consent to the search, he could later tell the officers to stop the search at any point. *Id.* Finally, Trujillo informed Jimeno that if he did not consent to a search, Trujillo would seek a search warrant that may or may not be issued by the judge presented with the request. *Id.* at n.2.

⁶³ *Jimeno*, 111 S. Ct. at 1803.

and observed the brown paper bag on the floorboard.⁶⁴ The bag was rolled up and its contents could not be observed without opening it.⁶⁵ Officer Trujillo picked up the brown paper bag, opened it, and found a kilogram of cocaine inside.⁶⁶

At trial, Jimeno filed a motion to suppress the cocaine.⁶⁷ The Circuit Court of Dade County first determined that Jimeno had freely consented to the search of his car.⁶⁸ Secondly, the court found that Jimeno was both advised that Officer Trujillo would be searching for illegal drugs and that Jimeno "could have assumed that the officer would have searched the bag."⁶⁹ Nonetheless, the court found that since Officer Trujillo did not specifically request permission to open the bag and examine the contents, and that Jimeno "never specifically consented to a search of the rolled-up paper bag," the cocaine should be suppressed.⁷⁰ Thus, the trial court held that absent additional specific consent to search the bag, Jimeno's "mere consent to search the car did not carry with it specific consent to open the bag and examine its contents," and therefore the officer had violated Jimeno's rights under the Fourth Amendment.⁷¹

The State appealed to the District Court of Appeals, arguing that the trial judge erred in not admitting the cocaine into evidence.⁷² The court disagreed however, affirming the grant of the suppression motion.⁷³ Quoting language from its earlier decision in *Shelton v. State*,⁷⁴ the court held that "consent to a general search for narcotics does not extend to 'sealed containers within the general area agreed to by the defendant.'"⁷⁵

The Florida Supreme Court granted certiorari and in a brief opinion affirmed the lower court's decision with one justice dissenting.⁷⁶ The majority based its decision on its previous holding in *Florida v. Wells*,⁷⁷ and stated that "consent to search a vehicle does

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *State v. Jimeno*, 550 So. 2d 1176 (1989).

⁶⁸ Brief for Respondent, *supra* note 54, at 3.

⁶⁹ *Jimeno*, 111 S. Ct. at 1803.

⁷⁰ *Jimeno*, 550 So. 2d at 1176.

⁷¹ *Jimeno*, 111 S. Ct. at 1803.

⁷² *Jimeno*, 550 So. 2d at 1176.

⁷³ *Id.*

⁷⁴ 549 So. 2d 236 (Fla. 3d DCA 1989), *review dismissed*, 557 So. 2d 867 (Fla. 1990).

⁷⁵ *Jimeno*, 550 So. 2d at 1176.

⁷⁶ *State v. Jimeno*, 564 So. 2d 1083 (Fla. 1990).

⁷⁷ 110 S. Ct. 1632 (1990).

not extend to a closed container found inside the vehicle.”⁷⁸ In *Wells*, the defendant consented to a search of the trunk of his car.⁷⁹ Upon inspection of the trunk compartment, the police found a locked suitcase.⁸⁰ Without seeking further consent to inspect the contents of the suitcase, the police pruned open the lock with a knife.⁸¹ Once opened, the police found a garbage bag containing a large amount of marijuana inside.⁸² The Florida Supreme Court suppressed the marijuana, stating that if the terms of a general consent to search a vehicle do not “convey permission to break open a locked or sealed container, it is unreasonable for the police to do so unless the search can be justified on some other basis.”⁸³ Thus, the court reasoned that since “locking . . . a container constitutes a manifest denial of consent to open it,” the scope of the general consent to look in the automobile’s trunk did not extend to a locked piece of luggage found inside.⁸⁴ Based on the foregoing reasoning, the Florida Supreme Court upheld the lower court’s decision granting Jimeno’s motion to suppress the cocaine.⁸⁵

The State timely filed a writ of certiorari to the United States Supreme Court. The Supreme Court granted certiorari to determine whether general consent to search a vehicle may extend to closed containers found inside the vehicle.⁸⁶

B. SUPREME COURT OPINIONS

1. *Majority Opinion*

Chief Justice Rehnquist, writing for the majority,⁸⁷ reversed the Florida Supreme Court and held that under the facts of this case, general consent to search the suspect’s automobile extended beyond the surfaces of the car’s interior and included the rolled up paper bag lying on the floorboard.⁸⁸ The Court reasoned that since it was objectively reasonable for the police officer to understand general consent to search for drugs as an authorization to examine the contents of the paper bag, the suspect’s rights under the Fourth

⁷⁸ *Jimeno*, 564 So. 2d at 1084.

⁷⁹ *Florida v. Wells*, 110 S. Ct. 1634.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *State v. Wells*, 539 So. 2d 464, 467 (Fla. 1989).

⁸⁴ *Id.* at 468.

⁸⁵ *State v. Jimeno*, 564 So. 2d 1083, 1084 (Fla. 1990).

⁸⁶ *Florida v. Jimeno*, 111 S. Ct. 1803, 1803 (1991).

⁸⁷ Justices White, Blackmun, O’Conner, Scalia, Kennedy, and Souter joined in Chief Justice Rehnquist’s majority opinion.

⁸⁸ *Jimeno*, 111 S. Ct. at 1804.

Amendment had not been transgressed.⁸⁹ Thus, the suspect's motion to suppress the cocaine was ultimately denied.⁹⁰

The majority began by stating the principle that the Fourth Amendment proscribes only those searches which are deemed unreasonable.⁹¹ Pursuant to this parameter, Chief Justice Rehnquist noted that the Supreme Court has consistently permitted consent searches, since it is clearly "reasonable for the police to conduct a search once they have been permitted to do so."⁹² The Court continued, noting that its decision in *Illinois v. Rodriguez*⁹³ set the standard for measuring the scope of consent searches under the Fourth Amendment as that of "'objective' reasonableness — what would the typical reasonable person have understood by the exchange between the officer and the suspect?"⁹⁴ Thus, the sole issue to be resolved was whether Officer Trujillo acted in an objectively reasonable manner when he construed the suspect's general consent to search the vehicle to include consent to examine the contents of the paper bag as well.⁹⁵

The majority's decision hinged on its earlier holding in *United States v. Ross*,⁹⁶ which stood for the proposition that "the scope of a search is generally defined by its expressed object."⁹⁷ Although not articulated by Chief Justice Rehnquist in *Jimeno*, *Ross* clearly stated that vehicle searches based on probable cause authorized police officers to open packages found within the vehicle which might contain the object of the search.⁹⁸ Thus, without delving into the facts of *Ross*, the Court simply used its distilled principle as the foundation for its holding and applied the facts of the case at bar to it.⁹⁹

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.* at 1803.

⁹² *Id.*

⁹³ 110 S. Ct. 2793 (1990).

⁹⁴ *Jimeno*, 111 S. Ct. at 1803-04.

⁹⁵ *Id.* at 1804.

⁹⁶ 456 U.S. 798 (1982). In *Ross*, police officers acting on information from an informant, stopped a car they believed to be carrying contraband. One of the officers opened the car's trunk and found a closed brown paper bag inside. The officer then opened the bag and found glassine bags which contained heroin.

The Supreme Court first determined that the officer had conducted a legitimate search based on probable cause. Furthermore, the Court stated that "a lawful search of a fixed premises generally extends to the entire area in which the object of the search may be found and is not limited by the possibility that separate acts of entry or openings may be required to complete the search." Based on this reasoning, the Court upheld the lawfulness of the officer's search of both the trunk and the paper bag.

⁹⁷ *Jimeno*, 111 S. Ct. at 1804.

⁹⁸ *Ross*, 456 U.S. at 800.

⁹⁹ *Jimeno*, 111 S. Ct. at 1804.

First, the Court noted that the terms of the consent search were straightforward; the suspect granted Officer Trujillo unrestricted authorization to search his car.¹⁰⁰ Thus, there was no evidence of any "explicit limitation on the scope of the search."¹⁰¹ Moreover, the Court stressed that the police officer explicitly informed Jimeno that he was suspected of transporting contraband and that during the inspection of the car the officer would be looking for controlled substances.¹⁰² Given the fact that Officer Trujillo received unrestricted authorization, under simple but specific terms, the majority reasoned that "it was objectively reasonable for [Officer Trujillo] to conclude that the general consent to search [the suspect's] car included consent to search containers within the car that might bear drugs."¹⁰³

The majority continued, stating that a reasonable person knows that drugs are "generally carried in some form of a container" and not "'strewn across the trunk or floor of a car.'"¹⁰⁴ Thus, the Court concluded that the suspect's general consent to search his car under these specific terms extended beyond the overtly visible surfaces of the car's interior to the rolled up paper bag lying on the floorboard.¹⁰⁵

The Court then distinguished the facts of the instant case from those of *State v. Wells*,¹⁰⁶ which the Florida Supreme Court had used as the basis for its contrary decision.¹⁰⁷ Noting that *Wells* involved the consent search of a vehicle's trunk for contraband, the Court stressed that the officer's actions in that case transcended the scope of the authorization to search the vehicle's trunk because the police officer broke open a locked briefcase found therein.¹⁰⁸ Noting that it is objectively unreasonable to assume that an individual's consent to search his trunk would also authorize damaging his property, the Court stated that it was "otherwise with respect to a closed paper bag."¹⁰⁹ The Court's implicit reasoning was that a locked briefcase manifests an intent to keep the contents lying within private. Thus, this heightened expectation of privacy in a locked briefcase would warrant additional consent by the suspect in order to allow a further

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.* (quoting *United States v. Ross*, 456 U.S. 798, 820 (1982)).

¹⁰⁵ *Id.* at 1804.

¹⁰⁶ 539 So. 2d 464 (Fla. 1989).

¹⁰⁷ *Jimeno*, 111 S. Ct. at 1804.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

search. The majority indicated that locked briefcases are clearly distinguishable from mere paper bags which do not manifest this heightened expectation of privacy.¹¹⁰

Finally, the majority addressed the respondent's contention that police should separately request permission to search each container if they wish to search closed containers found within the vehicle.¹¹¹ The majority reasoned that since a suspect has the power to restrict or narrow the scope of the consent search at any time, there was no need to add this additional "superstructure to the Fourth Amendment's basic test of objective reasonableness."¹¹²

In conclusion, the majority further justified its holding by stating, "the community has a real interest in encouraging consent, for the resulting search may yield necessary evidence for the solution and prosecution of crime, evidence that may ensure that a wholly innocent person is not wrongly charged with a criminal offense."¹¹³

2. *The Dissenting Opinion*

Justice Marshall¹¹⁴ dissented from the majority opinion and argued that the consent to search one's car, and the consent to search closed containers found within the car are not one and the same.¹¹⁵ Justice Marshall cautioned that construing a general consent to search a vehicle as including containers found inside the vehicle could, by the same logic, extend to searches of the consenting individual's body cavities since "a reasonable person may be expected to know that drug couriers frequently store their contraband on their persons or in their body cavities."¹¹⁶ Thus, the dissent reasoned that the integrity of the Fourth Amendment would be better maintained by requiring police officers to obtain additional consent before searching suspicious containers found inside the vehicle.¹¹⁷

Justice Marshall began his dissent by distinguishing between the well established expectations of privacy that attach to cars and to closed containers.¹¹⁸ Citing language from *Cardwell v. Lewis*¹¹⁹ and

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.* (quoting *Schneekloth v. Bustamonte*, 412 U.S. 218, 243 (1973)).

¹¹⁴ Justice Stevens joined Justice Marshall in the dissent.

¹¹⁵ *Jimeno*, 111 S. Ct. at 1804 (Marshall, J., dissenting).

¹¹⁶ *Id.* at 1806. (Marshall, J., dissenting).

¹¹⁷ *Id.* at 1805. (Marshall, J., dissenting).

¹¹⁸ *Id.* (Marshall, J., dissenting).

¹¹⁹ 417 U.S. 583, 590 (1974).

South Dakota v. Opperman,¹²⁰ Justice Marshall first noted that cars are generally open to public view, subjected to continual governmental control and regulation, and are not ordinarily "used as a residence or repository for one's personal effects."¹²¹ He contrasted cars with "luggage, handbags, paper bags, and other containers" that have traditionally enjoyed a "heightened expectation of privacy."¹²² Thus, Justice Marshall argued that the act of placing items inside a closed container clearly manifests an intention to keep those items private and " 'free from public examination.' "¹²³ Justice Marshall further argued that these distinct and separate expectations of privacy do not merge when one transports closed containers inside his car.¹²⁴

Justice Marshall then criticized the majority for suggesting a distinction between locked briefcases and paper bags as a plausible argument for diverging from the Court's holding in *Florida v. Wells*.¹²⁵ Quoting language from *Ross*, Justice Marshall stated that the central purpose of the Fourth Amendment forecloses such a distinction. For just as the most frail cottage in the kingdom is absolutely entitled to the same guarantees of privacy as the most majestic mansion, so also may a traveller who carries a toothbrush and a few articles of clothing in a paper bag or knotted scarf claim an equal right to conceal his possessions from official inspection as the sophisticated executive with the locked attaché case.¹²⁶

Consistent with this established privacy distinction between packages and cars, Justice Marshall reasoned that the heightened expectation of privacy attached to closed containers mandates that officers request additional consent before examining the contents of closed containers.¹²⁷ This procedural safeguard, according to Justice Marshall, would prevent police officers from exploiting the ignorance of citizens who might not intend their general consent to extend to searches of packages inside their cars.¹²⁸

Next, the dissent cautioned that by extending the scope of consent searches of vehicles to include searches of any container that might reasonably carry the object of the search, police officers may

¹²⁰ 428 U.S. 364, 368 (1976).

¹²¹ *Jimeno*, 111 S. Ct. at 1805. (Marshall, J., dissenting).

¹²² *Id.* (Marshall, J., dissenting).

¹²³ *Id.* (Marshall, J., dissenting) (quoting *United States v. Chadwick*, 433 U.S. 1, 11 (1977)).

¹²⁴ *Id.* at 1805. (Marshall, J., dissenting).

¹²⁵ *Id.* (Marshall, J., dissenting).

¹²⁶ *Id.* (Marshall, J., dissenting) (quoting *United States v. Ross*, 456 U.S. 798, 822 (1982)) (footnote omitted).

¹²⁷ *Id.* (Marshall, J., dissenting).

¹²⁸ *Id.* at 1806. (Marshall, J., dissenting).

subject drug courier suspects to searches of their body cavities since reasonable people know that drugs are often transported on the drug courier's person.¹²⁹ Furthermore, the dissent reasoned that despite arguments to the contrary, the majority's decision would only serve to thwart the "'community's . . . interest in encouraging consent'" because broadening the scope of consent searches would discourage individuals from consenting.¹³⁰ Furthermore, the dissent charged that the majority's real concern was that if police officers were required to obtain additional consent before searching closed containers found during automobile searches, "individuals who did not mean to authorize such additional searching would have the opportunity to say no."¹³¹

In conclusion, Justice Marshall reiterated his dissatisfaction with the majority's reasoning in *Schneckloth* that "practical interests in efficacious law enforcement" would be furthered by allowing an individual to validly consent to a search without being informed of his rights to withhold that consent.¹³² Quoting from his dissenting opinion in *Schneckloth*, Justice Marshall stated that "when the Court speaks of practicality, what it is really talking of is the continued ability of the police to capitalize on the ignorance of citizens so as to accomplish by subterfuge what they could not achieve by relying only on the knowing relinquishment of constitutional rights."¹³³ Accordingly, Justice Marshall concluded that an individual's consent to search his car should not extend authorization to a search of closed containers inside the car.¹³⁴

IV. ANALYSIS

The *Jimeno* Court correctly balanced the long standing governmental interest of protecting individuals from unreasonable invasions of privacy with the important competing interest of maintaining the effectiveness of valid consent searches. Chief Justice Rehnquist based his decision in *Jimeno* on the distilled gloss of "objective reasonableness" espoused in *Ross*.¹³⁵

The task of defining purely judgmental concepts such as "objective reasonableness" is a difficult one at best. In his concise two

¹²⁹ *Id.* (Marshall, J., dissenting).

¹³⁰ *Id.* (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 243 (1973)) (Marshall, J., dissenting).

¹³¹ *Jimeno*, 111 S. Ct. at 1806 (Marshall, J., dissenting).

¹³² *Id.* (Marshall, J., dissenting).

¹³³ *Id.* (Marshall, J., dissenting).

¹³⁴ *Id.* at 1804 (Marshall, J., dissenting).

¹³⁵ *Id.*

page opinion, the Chief Justice opted to state simply the standard of objective reasonableness narrowed in scope by a defined expressed object, and then applied this standard to the pertinent facts of *Jimeno*.¹³⁶ Although he arrived at the correct outcome, the Chief Justice failed to bridge the logical gap between *Ross* and *Jimeno* by not discussing the relationship of the authorization recognized under consent searches to that recognized under probable cause searches. Indeed, the Chief Justice failed to mention anywhere in the opinion that *Ross* involved a search based on probable cause, not a consent based search as in *Jimeno*. As discussed below, this logical gap in the majority's opinion leaves it vulnerable to criticisms such as that charged in Justice Marshall's dissenting opinion. It will be helpful in this analysis to set the stage for the *Ross* extension by reviewing its facts and reasoning, and the important principles that flowed from them.

A. *UNITED STATES V. ROSS*

In *United States v. Ross*,¹³⁷ the Supreme Court addressed the scope of police authority under the "automobile exception" to the Fourth Amendment's warrant requirement.¹³⁸ Specifically, the Court addressed the issue of the extent to which police officers "who have legitimately stopped an automobile and who have probable cause to believe that contraband is concealed somewhere within it may conduct a probing search of . . . containers within the vehicle whose contents are not in plain view."¹³⁹ *Ross* established the principle that a warrantless search of a vehicle based on probable cause extends to closed containers "that may conceal the object of the search."¹⁴⁰

In *Ross*, police officers received a tip from a reliable informant that an individual known as "Bandit"—later identified as Albert Ross, the defendant in this action—was selling narcotics kept in the trunk of his car located at a specified location.¹⁴¹ The officers quickly located the car and suspect using detailed descriptions provided by the informant.¹⁴² Without obtaining a warrant, the officers stopped the vehicle, told Ross to get out and proceeded to search

¹³⁶ *Id.*

¹³⁷ 456 U.S. 798 (1982).

¹³⁸ *Id.* at 800.

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 825.

¹⁴¹ *Id.* at 800.

¹⁴² *Id.* at 801.

the car's interior.¹⁴³ Next, one of the officers took the suspect's keys, opened the trunk and found a closed brown paper bag inside.¹⁴⁴ The officer then opened the bag and found a number of glassine bags containing heroin inside.¹⁴⁵

Ross was charged with possession of heroin with intent to distribute.¹⁴⁶ Prior to trial, Ross moved to suppress the heroin on the theory that the warrantless search of the paper bag was illegal.¹⁴⁷ The district court denied the motion and Ross was convicted.¹⁴⁸ After the court of appeals reversed, the Supreme Court granted certiorari.

Writing for the majority, Justice Stevens found both that the search was supported by probable cause that would justify the issuance of a warrant, and that the search was lawful — including the opening of the paper bag discovered inside the trunk.¹⁴⁹ The Court supported its holding by noting that “[d]uring virtually the entire history of our country—whether contraband was transported in a horse-drawn carriage, a 1921 roadster, or a modern automobile—it has been assumed that a lawful search of a vehicle would include a search of any container that might conceal the object of the search.”¹⁵⁰ The Court further explained:

A lawful search of fixed premises generally extends to the entire area in which the object of the search may be found and is not limited by the possibility that separate acts of entry or opening may be required to complete the search. Thus, a warrant that authorizes an officer to search a home for illegal weapons also provides authority to open closets, chests, drawers, and containers in which the weapon might be found. A warrant to open a footlocker to search for marihuana would also authorize the opening of packages found inside. A warrant to search a vehicle would support a search of every part of the vehicle that might contain the object of the search. When a legitimate search is under way, and when its purpose and its limits have been precisely defined, nice distinctions between closets, drawers, and containers, in the case of a home, or between glove compartments, upholstered seats, trunks, and wrapped packages, in the case of a vehicle, must give way to the interest in the prompt and efficient completion of the task at hand.¹⁵¹

Thus, the *Ross* Court found that where probable cause autho-

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 825.

¹⁵⁰ *Id.* at 820 n.26.

¹⁵¹ *Id.* at 820-21.

rizes a police officer to search the interior of an automobile for drugs, the authorization extends to closed containers found within the vehicle.¹⁵² This holds true even though the probable cause may not pertain specifically to the containers that are to be searched.¹⁵³ One possible rationale for this rule is that any objects that are inside the containers are also inside the car, therefore, the authority to search the container is implicit in the authorization to search the car.

B. APPLICATION OF *ROSS* TO *JIMENO*

The main point of inquiry in *Jimeno*, like that of *Ross*, was the scope of a warrantless search concerning closed but unlocked containers found within an automobile. In contrast to *Ross*, however, the warrantless search in *Jimeno* was based on the suspect's general consent, rather than probable cause resulting from surrounding circumstances.¹⁵⁴ Specifically, *Jimeno* addressed whether the scope of a general consent to search one's vehicle may extend to closed containers found inside that vehicle.¹⁵⁵

Although the majority decided *Jimeno* correctly, its rather cryptic reasoning is open to criticism. Most importantly, the majority's opinion completely failed to address the important distinction between consent based searches and searches based on probable cause in the context of automobiles. Thus, Chief Justice Rehnquist appears to have made the extraordinary judicial leap from *Ross* to *Jimeno* without any justification whatsoever. Perhaps equally perplexing, Marshall's dissent also failed to recognize this unbridged gap in the majority's opinion. It is untenable that this important distinction between *Ross* and *Jimeno* was not brought out thoroughly by either the majority or dissenting opinions since it arguably controls the outcome of the case. This holds true because (1) assuming the reasoning articulated in *Ross* is sound, and (2) police conduct pursuant to probable cause searches is equivalent to police conduct based on general consent, then it follows that (3) just as the suspect's Fourth Amendment rights in *Ross* were not transgressed, neither were those of the suspect in *Jimeno*. Indeed, whether one accepts the reasoning behind *Ross* or not, the doctrine of stare decisis mandates that *Ross* controls *Jimeno* if case law supports the analogy between consent and probable cause searches in the context of appropriate police activity.

¹⁵² *Id.* at 823.

¹⁵³ *Id.*

¹⁵⁴ *Florida v. Jimeno*, 111 S. Ct. 1801, 1803 (1991).

¹⁵⁵ *Id.*

As stated previously in this Note, legitimate police conduct pursuant to a suspect's general consent is essentially analogous to that based on probable cause.¹⁵⁶ Just as overstepping the terms of a consent search is no different than exceeding the explicitly stated parameters of a validly obtained search warrant, police conduct falling within the legally permissible parameters of consent will satisfy those parameters of probable cause searches as well. Indeed, consent and/or probable cause based searches can sometimes authorize a more extensive search than that of a warrant.¹⁵⁷ For example, a valid search warrant must specify both the place to be searched and the items to be seized, while a suspect's consent can authorize a general exploratory search.¹⁵⁸

Supreme Court jurisprudence also supports the proposition that appropriate police conduct based on consent should be deemed analogous to that based on probable cause. As previously noted, *Ross* analogized searches based on probable cause to those based on a validly obtained search warrant.¹⁵⁹ Similarly, *Schneckloth v. Bustamonte* stated that "[t]he actual conduct of [a consent] search may be precisely the same as if the police had obtained a warrant."¹⁶⁰ Thus, if (1) police conduct pursuant to probable cause is analogous to police conduct pursuant to a warrant, and (2) police conduct pursuant to consent is precisely the same as that pursuant to a warrant, then it logically follows that (3) police activity authorized by probable cause is analogous to that authorized by consent. In sum, the analogous concepts of legitimate police activity pursuant to consent based and probable cause based searches coupled with the doctrine of stare decisis result in a formula that confirms the outcome espoused by the *Jimeno* majority.¹⁶¹

¹⁵⁶ See *supra* note 34 and accompanying text.

¹⁵⁷ See *supra* note 26 and accompanying text.

¹⁵⁸ *Id.*

¹⁵⁹ *United States v. Ross*, 456 U.S. 798 (1982). "The scope of a warrantless search based on probable cause is no narrower—and no broader—than the scope of a search authorized by a warrant supported by probable cause. Only the prior approval of the magistrate is waived; the search otherwise is as the magistrate could authorize." *Id.* at 823 (footnote omitted). See also *Carroll v. United States*, 267 U.S. 132 (1925) Since a validly obtained search warrant could have authorized government agents to open the rear portion of the suspect's automobile and to rip open the upholstery in their search for contraband, the search based on probable cause was constitutionally permissible.

¹⁶⁰ *Schneckloth v. Bustamonte*, 412 U.S. 218, 243 (1973).

¹⁶¹ The *Jimeno* outcome is also supported by lower court jurisprudence. See e.g. *United States v. Kapperman*, 764 F.2d 786, 794 (11th Cir. 1985)(consent to search suspect's car and remove any items pertinent to the investigation authorized search of unlocked suitcase in car, "as documents or other items . . . cannot necessarily be expected to be lying loose in an automobile"); *United States v. Covello*, 657 F.2d 151 (7th Cir. 1981)(defendant's consent to complete search of car authorized search of three pieces of luggage

It is clear from the reasoning above that the majority's decision rendered the correct outcome in *Jimeno*. However, it is also clear that the Chief Justice could have bridged the logical gap in his argument by simply stating the facts of *Ross* with some specificity, and then drawing the analogy between searches based on probable cause and those based on consent. Having drawn this analogy, the Chief Justice could have then easily extended the *Ross* reasoning to *Jimeno*. Having woven the argument in this way, the Chief Justice could have rendered an opinion virtually impervious to all legitimate attacks from the dissent, save a rejection of the doctrine of *stare decisis* itself.

As it stands however, the majority's argument is susceptible to the very attack articulated by Justice Marshall. The thrust of Marshall's dissent is that the majority's opinion does not provide adequate protection against seemingly oppressive searches conducted by overzealous police officers. Specifically, Marshall's concern is that the majority's opinion puts too much discretion in the hands of police officers who could literally search an individual's body cavities having merely obtained the suspect's general consent to search his automobile.

Although at first blush Justice Marshall's charge appears to be an unreasonable extension of the majority's opinion, a closer analysis shows that it is not wholly without merit. As previously stated, Chief Justice Rehnquist based his limitation on the scope of consent searches primarily on the concept of "objective reasonableness" limited by the search's "expressed object."¹⁶² This standard was narrowed further when the majority addressed its reason for overruling the Florida Supreme Court's decision which was based on *State v. Wells*.¹⁶³ In just three sentences the majority distinguished *Wells* as a case where the search of a locked suitcase resulted in property damage — unlike *Jimeno* where no damage to property resulted from the search.¹⁶⁴ Thus, the majority factored property damage as a limitation into its consent scope calculus, further curbing the breadth of consent searches of automobiles for contraband. Unfortunately, the Court opted to leave the property damage limitation to objective reasonableness as a nebulous parameter and did not opine on what degree of damage might overstep the unclear line of objective reasonableness. For example, if prying open a suitcase with a

in the car's trunk); *State v. Austin*, 581 P.2d 1288 (1978) (defendant's consent to search his car's trunk authorized officer to open paper sack found within).

¹⁶² *Florida v. Jimeno*, 111 S. Ct. 1801, 1806 (1991) (Marshall, J., dissenting).

¹⁶³ *State v. Wells*, 539 So. 2d 464 (Fla. 1989).

¹⁶⁴ *Jimeno*, 111 S. Ct. at 1804.

knife as in *Wells* is going too far, then what about tearing off a shrink-wrapped plastic seal on the top of a medicine bottle? Or perhaps when removing a piece of tape from a rolled up paper bag, the bag is inadvertently torn — would this call for upholding a suppression motion based on a Fourth Amendment violation? Although the majority's opinion is refreshingly brief, it fails to adequately address many of the nuances of the *Jimeno* issue and leaves entirely too much discretion in the hands of investigating police officers.

Most importantly, as suggested by Justice Marshall, the majority's property damage limitation on the scope of consent searches apparently legitimizes any search activity that does not result in property damage. Since cavity searches generally entail a non-injurious probing of a suspect's bodily orifices,¹⁶⁵ they arguably do not result in any "property damage" as the term would be defined considering objectively viewed shared expectations of society. Thus, based on Chief Justice Rehnquist's opinion, police officers are free to strip search and perform cavity checks on all suspected drug couriers who consent to have their vehicles searched.

This extension of the majority opinion is probably not what the Chief Justice had in mind when he articulated his objective reasonableness standard. In fact, Chief Justice Rehnquist would likely argue that there is nothing "objectively reasonable" about administering cavity searches based on an individual's general consent to search his vehicle. Be that as it may, Justice Marshall's dissent illustrates the malleability of the majority's opinion and signals that a more precise delineation of the limits imposed on the scope of consent searches should have been articulated.

While an in depth discussion of other possible limitations of consent searches and their ramifications is beyond the scope of this Note, this author acknowledges that a problem of this caliber does not lend itself to a mere listing of limitations. Although a broad limitation such as restraining police officers from strip searches based on general consent altogether could be articulated by courts in the future, administrative rules adopted by individual police stations are probably the best way to deal with this problem. Each police station could specify that officers obtaining an general consent can go no further than a general "patdown"¹⁶⁶ search of suspects for drugs or concealed weapons, subject to certain specified limita-

¹⁶⁵ Otherwise known as a "body search," whereby an individual's "body cavities and hair are examined for hidden contraband and weapons." 9 THE GUIDE TO AMERICAN LAW 136 (1984).

¹⁶⁶ Also known as a "stop and frisk" or "threshold inquiry," a patdown refers to a police officer "run[ing] [his] hands lightly over the suspect's outer garments to deter-

tions. Any limitations must be strictly adhered to since patdown searches can entail an infinite set of variations of intensity depending on the particular police officer and corresponding suspect.¹⁶⁷

One might query what rationale could explain the majority's brief and nebulous opinion on this important issue? This author speculates that there are at least two reasons. First, the task of delineating a bright line rule to define the scope of vehicular consent searches may simply be impossible.¹⁶⁸ With a veritable plethora of different types of containers capable of concealing contraband, the court may have decided that this problematic issue did not lend itself to a rigid mechanical bright line rule. Pursuant to that reasoning, the court may have arrived at a second reason. By authoring a cryptic general holding, the majority has set the stage for many highly judgmental rulings by lower courts that are clearly in the best position to embrace all of the pertinent facts and render more appropriate decisions in specific case scenarios.

Whatever the reasoning for its brevity, the above analysis shows that the Court reached a reasonable conclusion by extending the well grounded principles espoused in *Ross* to warrantless searches based on consent. Lower courts, however, should bear in mind that broadening the scope of permissible police activities at the expense of Fourth Amendment protections must always warrant detailed analyses and substantial justifications.

V. CONCLUSION

The *Jimeno* Court addressed an important issue foreshadowed by *Ross*. This issue required a balancing of individuals' privacy interests in automobiles and closed containers with maintaining the integrity of consent searches as an effective law enforcement technique. The *Jimeno* majority chose to apply the standard of "objective reasonableness" in analyzing the scope of searches for narcotics in automobiles based on the suspect's general consent.¹⁶⁹ The Court was forced to choose between the two competing precedents

mine if the person is carrying a concealed weapon." BLACK'S LAW DICTIONARY 1420 (6th ed. 1991).

¹⁶⁷ However, the patdown search is generally "intended to stop short of any activity that could be considered a violation of Fourth Amendment rights." *Id.*

¹⁶⁸ See, e.g. *United States v. Ross*, 456 U.S. 798, 804 (1982). Referring to situations where police officers have probable cause to believe individuals driving a stopped vehicle may be transporting contraband, the Court stated, "[i]n every such case a conflict is presented between the individual's constitutionally protected interest in privacy and the public interest in effective law enforcement. No single rule of law can resolve every conflict. . . ."

¹⁶⁹ See *Florida v. Jimeno*, 111 S. Ct. 1801, 1804 (1991).

established in *Ross* and *Wells*. An extension of either holding necessarily would limit severely the holding of the other. The majority's decision to extend *Ross* from searches based on probable cause to those based on consent, will have far reaching ramifications. These ramifications will further current public policy of thwarting drug trafficking activities by allowing police officers to capitalize on consent searches. Yet this outcome still preserves the integrity of the Fourth Amendment protection against warrantless invasions of privacy. Had the Court come to the contrary decision espoused by the dissent, a decision which would limit consent searches only to exposed surfaces of the interior of vehicles, general consent would have been rendered a hollow, meaningless concept.

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